concern. The principle upon which this distinction is based is that the municipality acts in a dual capacity, as the agent of the state with regard to certain matters and as the agent of its own inhabitants with regard to others, and in respect to the former it is subject to the complete control of the state. *People* v. *Common Council of Detroit*, 28 Mich. 228. While extremely difficult of application, the distinction is indispensable if the doctrine of local independence is accepted. The difficulty lies in drawing the line between matters of general and matters of local concern. In two recent cases it is held that the management of the municipal waterworks and fire department is a matter of purely municipal concern, and that a statute transferring their control to a state board is an unconstitutional interference with the right of municipal self-government. *State* v. *Barker*, 89 N. W. Rep. 204 (Ia.); *State* v. *Fox*, 63 N. E. Rep. 19 (Ind., Sup. Ct.). Although the weight of authority sustains these conclusions there are decisions *contra*. *David* v. *Portland Water Committee*, 14 Or. 98.

A conflict of opinion must necessarily arise upon this question because of the nature of the problem to be solved. The courts are called upon to decide whether the empowering of a municipality to carry on a certain work is a delegation by the state of a matter of general concern, or merely the grant of power to do things in the doing of which the state as a whole has no particular interest. Inasmuch as whatever involves the health and prosperity of a large body of citizens is a matter of interest to the entire state, the administration of matters local in their nature is likely to become of state concern. Where this is true it can fairly be said that the municipality is acting as the agent of the state with respect to those matters and is subject to its control. Under this view the analogy of the decisions upon what constitutes a public use justifying the exercise of the power of eminent domain should be followed, and a wide legislative discretion should be recognized even by those courts that uphold the local independence of the municipality.

DUE PROCESS IN EX PARTE APPOINTMENTS OF RECEIVERS. — Independently of statute, courts of equity in ordinary cases will entertain an application for the appointment of a receiver only after notice or rule to show cause. *Verplank* v. *Mercantile Co.*, 2 Paige (N. Y.) 438. In cases of emergency, however, and where under the circumstances the giving of actual notice is impracticable or inexpedient, a receiver will be appointed without such notice having been given. *Hendrix* v. *American Freehold, etc., Co.*, 95 Ala. 313. The constitutional aspect of such appointments is suggested by a recent decision of the Federal Circuit Court of Appeals for the district of Kentucky. A valid judgment *in personam* had been rendered by a state court against a foreign corporation; the defendant thereupon withdrew all of its tangible property from the state, discontinued its local agencies, and notified policy holders and all others to conduct business with the home office. After return of execution unsatisfied, the state court, upon petition setting forth the facts, appointed a receiver to collect accounts due the judgment debtor from persons within the state and from them to satisfy the judgment. This appointment was attacked by the foreign corporation in a federal court upon the ground that since no notice of the application for the

appointment of a receiver had been given, the proceedings were without due process of law. The court held that the appointment of the receiver was but a continuation of the original action, and that hence no new notice was necessary. But even assuming that it was a new action, the court stated that it was not prepared to say that the constitutional requirement of due process was infringed by the appointment of a receiver before notice. *Phelps* v. *Mutual Reserve, etc., Assoc.*, 112 Fed. Rep. 453.

The suggestion of the court is entirely sound, although an early Connecticut *dictum* appears to be *contra*. *Bostwick* v. *Isbell*, 41 Conn. 305. The appointment of a receiver is a purely administrative act for the purpose of enforcing the judgment of the court, and is based upon and confined to the jurisdiction that every sovereign has over property within its territorial limits. The appointment alone is not a deprivation of property, because it is well settled that the receiver himself takes no title but as an officer of the court holds property in the custody of the law. *Keeney* v. *Home Ins. Co.*, 71 N. Y. 396, 401. There is often, to be sure, a certain temporary interference with the beneficial user of property, but temporary restrictions upon the use of property imposed by a court of equity in the exercise of its extraordinary preventive jurisdiction, even though based upon *ex parte* proceedings, have never been considered obnoxious to the Fourteenth Amendment. After judgment rendered, the disposal of the property by the receiver may amount to a deprivation of property, but is no more repugnant to the constitutional requirement of due process than a levy and sale by a sheriff upon execution duly issued. The receiver's sale, like that of the sheriff, passes only the title of the judgment debtor unless the judgment upon which it was based was given in proceedings *in rem*. The property interests of persons not parties to the judgment upon which the receivership proceedings are based remain unaffected by the receiver's disposal of the property. *Dann Mfg. Co.* v. *Parkhurst*, 125 Ind. 317. As the mere appointment of a receiver does not effect a change upon the title to the property, and as his disposal affects only the title of those against whom a valid judgment has been obtained, it follows that the requirement of due process does not preclude the appointment of receivers upon *ex parte* proceedings.

MARTIAL LAW. — About thirty-five years ago the subject of martial law was carefully considered in England as a result of Governor Eyre's acts in suppressing the Jamaica Rebellion. It was likewise considered in the United States at the same time, owing to the conduct of military commanders during the Civil War. The position taken by Lord Chief Justice Cockburn in his charge to the Grand Jury in the case of *Regina* v. *Nelson and Brand*, and that taken by the majority of the Supreme Court of the United States in *Ex parte Milligan*, 4 Wall. 2, were substantially the same. The rule laid down was, broadly, that no civilian could be tried by martial law, where the civil courts were sitting and in actual exercise of their ordinary functions. Considerable authority was cited to sustain this view. Since then, until very recently, the courts of the two countries have not had occasion to discuss the subject. The war in South Africa, however, brought the question once more before the courts of England. The Judicial Committee of the Privy Council in dismissing a petition for special leave to appeal from the order of the